

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMBERS
COMMISSIONER

March 1, 1982

Scheduled bus service in the ("Carrier") operates a Area. The Area is within the jurisdiction of the ("Authority"), which is a regional transit authority organized under Chapter 161B of the General Laws. The Carrier provides service under contract with the Authority. You inquire whether purchases made by the Carrier for the operation of the service are exempt from the Massachusetts sales tax as purchases for resale or as purchases by the Carrier as an agent of the Authority.

In operating the service, the Carrier makes purchases in its own name. The Authority transfers funds to the Carrier to cover the cost of such purchases and the Carrier pays for them with checks drawn against its own checking account. The Carrier submits bi-weekly disbursement vouchers to the Authority.

General Laws Chapter 64H, Section 2 imposes a tax on sales at retail of tangible personal property in the Commonwealth by any vendor. "Sale at retail" is defined in Section 1(13) of Chapter 64H as a sale of tangible personal property for any purpose other than resale in the regular course of business.

March 1, 1982

Chapter 64H, Section 6(aa) exempts from tax

"[s]ales of new and used motor buses used to provide scheduled, intracity local service (as defined by the Department of Public Utilities), and repair or replacement parts therefor, and materials and tools used in and for the maintenance and repair thereof to, and for the use of common carriers of passengers by motor vehicle for hire, which hold at least one certificate, issued by the department of public utilities pursuant to the provisions of section seven of chapter one hundred and fifty-nine A"

and requires the Commissioner to prepare and issue to any such duly certified common carrier a statement that the Carrier is entitled to exemption pursuant to Section 6(aa).

Under Chapter 159A, Section 7, no person may operate under a motor vehicle common carrier's license issued by a local licensing authority unless he also has obtained from the DPU a certificate declaring that public convenience and necessity require such operation; however, the Authority is authorized under Chapter 161B, Section 6

"(i) to provide mass transportation service on an exclusive basis...in the area constituting the authority and without being subject to the jurisdiction and control of the department of public utilities in any manner except as to safety of equipment and operations..."

General Laws Chapter 161B, Section 13, the provision governing taxation of the Authority, provides:

"[a]n authority and all its real and personal property shall be exempt from taxation and from betterments and special assessments; and an authority shall not be required to pay any tax, excise or assessment to or for the common-wealth or any of its political subdivisions..."

March 1, 1982

Massachusetts General Laws Chapter 64H, Section 6(d) exempts sales to the United States, the Commonwealth of Massachusetts or any political subdivision thereof, or their respective agencies. A purchaser is an "agency" for purposes of ~~this~~ provision only if it is a regularly constituted department ~~of~~ government or an entity wholly owned by the government and exercising exclusively governmental functions. First Agricultural National Bank v. State Tax Commission, 353 Mass. 172 (1967) (reversed on other grounds, 392 U.S. 339 (1968)).

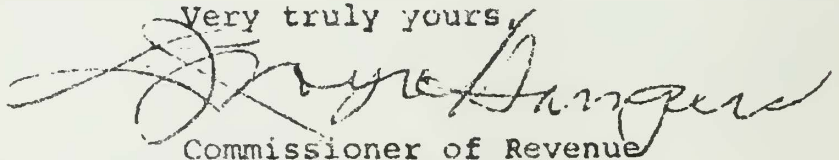
In determining whether purchases made by a contractor pursuant to a United States Government contract are purchases by the contractor or purchases by the United States through the contractor as its agent, the key factor is whether the credit of the contractor or that of the United States is bound under the purchasing contract. Compare Kern-Limerick v. Scurlock, 347 U.S. 110 (1954) and Alabama v. King & Boozer, 314 U.S. 1 (1941).

Based on the foregoing, it is ruled that:

(1) purchases made by the Carrier for the operation of the service are not exempt from the sales tax as purchases for resale to the Authority or as purchases by the Carrier as an agent of the Authority or as an agency of the government; but

(2) purchases of motor buses by the Carrier to provide scheduled intracity local service under contract with the Authority and purchases of repair and replacement parts for the buses and materials and tools used for the maintenance of the buses are exempt from the sales tax under Chapter 64H, Section 6(aa).

Very truly yours,



Royce D. Angers

Commissioner of Revenue

LJH:JD:mf

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